



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1256]

Certain Portable Battery Jump Starters and Components Thereof; Notice of the Commission's Final Determination with Respect to Defaulting Respondents; Issuance of a Limited Exclusion Order; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found the requirements of the Tariff Act of 1930, as amended, met, based on a complaint filed by the NOCO Company alleging a violation with respect to U.S. Trademark Registration Nos. 4,811,656 ("the '656 mark") and 4,811,749 ("the '749 mark") by defaulting respondent Zhejiang Quingyou Electronic Commerce Co., Ltd. ("Zhejiang Quingyou") and with respect to the '749 mark by defaulting respondent Shenzhen Mediatek Tong Technology Co., Ltd. ("Mediatek"). The Commission has determined to issue a limited exclusion order against defaulting respondents Zhejiang Quingyou and Mediatek. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server (<https://www.usitc.gov>). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On March 23, 2021, the Commission instituted this investigation based on a complaint filed on behalf of The NOCO Company

of Glenwillow, Ohio (“NOCO”). 86 FR 15496-98 (Mar. 23, 2021). The complaint, as supplemented and amended, alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable battery jump starters and components thereof by reason of infringement of one or more of claims 1, 4, 11, 14, 18, 19, and 21 of U.S. Patent No. 9,007,015 (“the ’015 patent”) and claims 1, 4-6, 16, 19, 23, 24, 26, 29, and 30 of the ’024 patent, and infringement of the ’656 and ’749 marks. *Id.* at 15497.

The notice of investigation named the following respondents: (1) Advance Auto Parts, Inc. of Raleigh, North Carolina; (2) Anker Technology (UK) Ltd. of Birmingham, United Kingdom; (3) Antigravity Batteries LLC of Gardena, California; (4) Arteck Electronic Co., Ltd. of Shenzhen, China; (5) AutoZone, Inc. of Memphis, Tennessee; (6) Best Buy Co., Inc. of South Richfield, Minnesota; (7) Best Parts, Inc. of Memphis, Tennessee; (8) Clore Automotive, LLC of Lenexa, Kansas; (9) Deltran USA, LLC of DeLand, Florida; (10) Energen, Inc. of City of Industry, California; (11) FlyLink Tech Co., Ltd. of Shenzhen, China; (12) Gooloo Technologies LLC and Shenzhen Gooloo E-Commerce Co., Ltd of Shenzhen, China; (13) Great Neck Saw Manufacturers, Inc. of Mineola, New York; (14) Guangdong Boltpower Energy Co., Ltd of Shenzhen City, China; (15) Halo2Cloud, LLC of Hartford, Connecticut; (16) Horizon Tool, Inc. of Greensboro, North Carolina; (17) K-Tool International of Plymouth, Michigan; (18) Lowe’s Companies, Inc. of Mooresville, North Carolina; (19) Matco Tools Corporation of Stow, Ohio; (20) MonoPrice, Inc. of Brea, California; (21) National Automotive Parts Association, LLC (d/b/a NAPA) of Atlanta, Georgia; (22) Nekteck, Inc. of Anaheim, California; (23) O’Reilly Automotive, Inc. of Springfield, Missouri; (24) Paris Corporation of Westampton, New Jersey; (25) PowerMax Battery (U.S.A.), Inc. of Ontario, California; (26) Prime Global Products, Inc. of Ball Ground, Georgia; (27)

QVC, Inc. of West Chester, Pennsylvania; (28) Schumacher Power Technology Ltd. of Yancheng, China; (29) Schumacher Electric Corp. of Mount Prospect, Illinois; (30) Shenzhen Carku Technology Co., Ltd. of Shenzhen, China; (31) Shenzhen Dingjiang Technology Co., Ltd. of Shenzhen, China; (32) Shenzhen Jieruijia Technology Co. Ltd. of Gong Ming, China; (33) Mediatek of Shenzhen, China; (34) Shenzhen Take Tools Co., Ltd. of Shenzhen, China; (35) Shenzhen Topdon Technology Co., Ltd. of Shenzhen, China; (36) Shenzhen Valuelink E-Commerce Co., Ltd. of Shenzhen, China; (37) Smartech Products, Inc. of Savage, Maryland; (38) ThiEYE Technologies Co., Ltd. of Longgang, China; (39) Tii Trading Inc. of Baldwin Park, California; (40) Walmart Inc. of Bentonville, Arkansas; (41) Winplus North America, Inc. of Costa Mesa, California; (42) Zagg Co. Rrd Gst of Plainfield, Indiana; (43) Zhejiang Quingyou of Hangzhou, China; and (44) 70mai Co., Ltd. of Shanghai, China. *Id.* at 15497-98. The Office of Unfair Import Investigations is a party to the investigation. *Id.* at 15498.

The Commission permitted NOCO to amend the amended complaint and notice of investigation to make the following changes: (1) to substitute Lowe’s Home Centers, LLC, for Lowe’s Companies, Inc.; (2) to substitute O’Reilly Automotive Stores, Inc., O’Reilly Auto Enterprises, LLC, and Ozark Purchasing, LLC, for O’Reilly Automotive, Inc.; (3) to substitute Anker Innovations Ltd. (HK) for Anker Technology (UK) Ltd.; (4) to substitute ZAGG Inc. for Zagg Co. Rrd; (5) to substitute Shenzhen Dingjiang Technology Co., Ltd. (d/b/a Shenzhen Topdon Technology Co., Ltd. and Topdon Technology Co., Ltd.) for Shenzhen Dingjiang Technology Co., Ltd., and Shenzhen Topdon Technology Co., Ltd.; and (6) to add additional respondents related to Winplus North America, Inc.—ADC Solutions Auto, LLC d/b/a/ Type-S and Winplus NA, LLC. Order No. 13 (Apr. 23, 2021), *unreviewed by* Comm’n Notice (May 18, 2021).

The Commission subsequently terminated the investigation with respect to National Automotive Parts Association, LLC (d/b/a NAPA), Shenzhen Jieruijia

Technology Co., Ltd., and Shenzhen Take Tools Co., Ltd. based on a voluntary withdrawal of the complaint. Order No. 9 (Apr. 13, 2021), *unreviewed by Comm’n Notice* (May 12, 2021); Order No. 47 (Dec. 6, 2021), *unreviewed by Comm’n Notice* (Jan. 4, 2022). The Commission also subsequently terminated the investigation based on a settlement agreement with respect to the following respondents: Advance Auto Parts, Inc.; Lowe’s Home Centers, LLC; Ozark Purchasing, LLC; O’Reilly Automotive Stores, Inc.; O’Reilly Auto Enterprises, LLC; Shenzhen Dingjiang Technology Co., Ltd. (d/b/a Shenzhen Topdon Technology Co., Ltd. and Topdon Technology Co., Ltd.); Walmart, Inc.; QVC, Inc.; AutoZone, Inc.; and Best Parts, Inc. Order No. 11 (Apr. 19, 2021), *unreviewed by Comm’n Notice* (May 4, 2021); Order No. 14 (Apr. 23, 2021), *unreviewed by Comm’n Notice* (May 18, 2021); Order No. 21 (Jul. 7, 2021), *unreviewed by Comm’n Notice* (Jul. 26, 2021); Order No. 31 (Sept. 20, 2021), *unreviewed by Comm’n Notice* (Oct. 12, 2021); Order No. 35 (Oct. 20, 2021), *unreviewed by Comm’n Notice* (Nov. 22, 2021); Order No. 44 (Nov. 15, 2021), *unreviewed by Comm’n Notice* (Dec. 6, 2021). Finally, the Commission terminated the investigation with respect to Schumacher Electric Corp. and Schumacher Power Technology Ltd. based on a consent order stipulation and entry of a consent order. Order No. 52 (Jan. 12, 2022), *unreviewed by Comm’n Notice* (Feb. 4, 2022).

The Commission found several respondents in default for failing to respond to the complaint, notice of investigation, and order to show cause why they should not be found in default. These defaulting respondents include the following: Energen, Inc.; FlyLink Tech Co., Ltd.; K-Tool International; MonoPrice, Inc.; Prime Global Products, Inc.; Mediatek; Shenzhen Valuelink E-Commerce Co., Ltd.; ThiEYE Technologies Co., Ltd; Tii Trading Inc.; Zhejiang Quingyou; and Arteck Electronics Co., Ltd. Order No. 23 (Jul. 13, 2021), *unreviewed by Comm’n Notice* (Jul. 30, 2021); Order No. 45 (Nov. 16, 2021), *unreviewed by Comm’n Notice* (Dec. 10, 2021). The Commission also found Smartech

Products, Inc. in default based on its voluntary default. Order No. 28 (Aug. 9, 2021), *unreviewed by Comm’n Notice* (Aug. 20, 2021).

Accordingly, at the time of the evidentiary hearing, the following respondents remained active in the investigation: Antigravity Batteries LLC, Gooloo Technology LLC and Shenzhen Gooloo E-Commerce Co., Ltd., Horizon Tool, Inc., Nekteck, Inc., PowerMax Battery (U.S.A.), Inc., Shenzhen Carku Technology Co., Ltd., 70mai Co., Ltd., Matco Tools Corporation, Paris Corporation, and Great Neck Saw Manufacturers, Inc. (collectively, the “Carku respondents”); Guangdong Boltpower Energy Co., Ltd. and Best Buy Co., Inc. (collectively, the “Boltpower respondents”); and Winplus North America, Inc., Winplus NA, LLC, and ADC Solutions Auto, LLC d/b/a Type S (collectively, the “Winplus respondents”).

The Commission also terminated the investigation with respect to claims 4, 14, 18, and 21 of the ’015 patent and claims 4, 5, 6, 19, 23, and 26 of the ’024 patent based on NOCO’s partial withdrawal of the complaint. Order No. 27 (Aug. 6, 2021), *unreviewed by Comm’n Notice* (Aug. 18, 2021). The Commission later terminated the investigation with respect to the ’015 patent in its entirety. Order No. 46 (Dec. 6, 2021), *unreviewed by Comm’n Notice* (Jan. 4, 2022).

Accordingly, at the time of the evidentiary hearing, the ’656 mark, the ’749 mark, and claims 1, 16, 24, 29, and 30 of the ’024 patent remained asserted in the investigation. Specifically, NOCO asserted the following: claims 1, 16, 24, 29, and 30 of the ’024 patent against the Carku respondents; claims 1, 16, 24, 29, and 30 against the Boltpower respondents; claims 1, 16, 29, and 30 against the Winplus respondents; and claims 1, 29, and 30 against ten of the twelve defaulting respondents. Final ID at 8-9. NOCO also accused defaulting respondent Mediatek of infringing the ’749 mark and defaulting respondent Zhejiang Quingyou of infringing the ’749 mark and the ’656 mark. *Id.* at 338. NOCO’s post-hearing brief did not contain infringement allegations against defaulting

respondents FlyLink Tech Co., Ltd. and Arteck Electronics Co., Ltd. *See* CIB at 71-72, 183; Final ID at 8-9, 338.

On April 29, 2022, the ALJ issued a Final Initial Determination (“ID”) finding a violation with respect to the ’749 mark by defaulting respondent Mediatek and with respect to the ’656 and ’749 marks by defaulting respondent Zhejiang Quingyou, and finding no violation with respect to the ’024 patent. Specifically, with respect to the ’024 patent, the ID finds that NOCO showed that the products of the Boltpower respondents and the ten defaulting respondents infringe the asserted claims of the ’024 patent, but that NOCO failed to show that the products of the Carku respondents and Winplus respondents infringe the asserted claims. The ID further finds that no asserted claim of the ’024 patent was shown to be invalid or unenforceable. Additionally, the ID finds that NOCO satisfied the economic prong of the domestic industry requirement but failed to satisfy the technical prong as to the ’024 patent, and thus failed to establish a violation of section 337 as to that patent.

The Commission received no post-Recommended Determination submissions on the public interest.

On May 13, 2022, NOCO filed a petition with respect to the ’024 patent, seeking review of certain of the Final ID’s findings on the technical prong of the domestic industry requirement and infringement and seeking contingent review of certain of the Final ID’s findings on invalidity. That same day, Boltpower filed a petition seeking review of certain of the ALJ’s and ID’s findings on claim construction and infringement with respect to the ’024 patent. Also on May 13, 2022, the Carku and Winplus respondents filed a joint contingent petition with respect to the ’024 patent, seeking review of the Final ID on numerous issues related to infringement, invalidity, the technical prong of the domestic industry requirement, and the economic prong of the domestic industry requirement. No petitions were filed concerning the Final ID’s

findings with respect to the asserted trademarks. On May 23, 2022, the parties and OUII filed responses to each other's petitions.

On June 30, 2022, the Commission determined not to review the Final ID's findings of a violation of section 337 with respect to the '656 mark and the '749 mark by defaulting respondent Zhejiang Quingyou and with respect to the '749 mark by defaulting respondent Mediatek. The Commission presumes that the allegations in the second amended complaint against Zhejiang Quingyou and Mediatek are true with respect to the '656 and '749 marks based on those respondents' defaults. 19 U.S.C. 1337(g)(1). The Commission also determined to review in part the Final ID's finding of no violation of section 337 with respect to the '024 patent and, on review, to affirm the Final ID's finding of no violation due to NOCO's failure to satisfy the technical prong of the domestic industry requirement. The Commission determined to take no position on the remainder of Final ID's findings under review. *Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984). The Commission's notice requested that the parties, interested government agencies, and the public provide written submissions on remedy, bonding, and the public interest with respect to defaulting respondents Zhejiang Quingyou and Mediatek.

Having examined the parties' submissions concerning remedy, the public interest, and bonding, the Commission has determined, pursuant to subsection 337(g)(1) (19 U.S.C. 1337(g)(1)), that the appropriate form of relief in this investigation is a limited exclusion order ("LEO") with respect to Zhejiang Quingyou prohibiting the importation of certain portable battery jump starters and components thereof that infringe the '656 or '749 marks and with respect to Mediatek prohibiting the importation of certain portable battery jump starters and components thereof that infringe the '749 mark. Although NOCO requested the Commission to issue cease and desist orders ("CDOs") directed to these defaulting respondents, the Commission has determined not to issue

CDOs because of the lack of evidence or allegations that Zhejiang Quingyou or Mediatek maintain commercially significant inventory and/or engage in significant commercial operations the United States. The Commission has further determined that the public interest factors enumerated in subsection 337(g)(1) do not preclude the issuance of the limited exclusion order.

Commissioner Schmidtlein and Commissioner Karpel agree that subsection 337(g)(1) is the appropriate authority for issuance of relief in this case, but they disagree with the determination not to issue the CDOs requested by NOCO. Specifically, Commissioners Schmidtlein and Karpel support issuance of both the requested LEO and the requested CDOs against defaulting respondents Zhejiang Quingyou and Mediatek because the criteria for issuance of such relief under subsection 337(g)(1)(A)-(E) are met as to these respondents. (19 U.S.C. 1337(g)(1)(A)-(E); *see* Order No. 23 at 2 (July 13, 2021); Notice of a Commission Determination Not to Review an Initial Determination Finding Ten Respondents in Default (July 30, 2021)). Here, in addition to an exclusion order, NOCO has requested CDOs as to these two defaulting respondents both in its post-hearing briefing before the ALJ and in its remedy submission before the Commission. Given that subsections 337(g)(1)(A)-(E) are satisfied, in Commissioner Schmidtlein's and Commissioner Karpel's view, the statute directs the Commission to issue the requested CDOs, subject to consideration of the public interest. Commissioners Schmidtlein and Karpel further find that the public interest factors enumerated in subsection 337(g)(1) do not preclude the issuance of the CDOs directed to defaulting respondents Zhejiang Quingyou and Mediatek. Accordingly, Commissioners Schmidtlein and Karpel support issuance of the CDOs, in addition to the issuance of the LEO discussed above, under subsection 337(g)(1).

Finally, the Commission has determined that the bond for importation during the period of Presidential review shall be in the amount of one hundred percent (100%) of the

entered value of such articles.

The Commission's notice and order were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury and Customs and Border Protection of the order. The investigation is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 29, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

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